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# *THE INTERIM*

NOVEMBER 1999

HELENA, MONTANA

VOL. XIII NO. 6

## EDUCATION AND LOCAL GOVERNMENT COMMITTEE

Committee Meets for Second Time...The Education and Local Government Committee met on Friday, October 1 in Room B7 of the Federal Building. The Committee discussed numerous issues relating to education and local government.

Committee Hears from Education Commission of the States...Gloria Zradicka, research analyst for the Education Commission of the States (ECS), gave a presentation to the Committee on the work of ECS. ECS is a nonpartisan compact of states devoted to education issues at both the K-12 and the postsecondary levels. ECS conducts research on important and emerging issues in education, organizes meetings and workshops within states and on a regional basis, hosts educational and informational seminars, and publishes books and issue papers, etc., dealing with educational issues. Montana is currently not a member of ECS, but Ms. Zradicka hoped that by her presentation, the Committee would recommend membership to the Legislature. The annual fee for membership is \$43,800. Ms. Zradicka suggested passing the membership legislation separately from the appropriation for the annual fee. This way, Montana could get a feeling for what ECS can provide.

The Committee asked staff to compile a list of other educational organizations that Montana belongs to along with the membership fees for each organization. Upon receipt of that information, the Committee will make a recommendation as to state membership in ECS.

Committee Hears from Montana Commission on Teaching...Erik Burke, education policy advisor to Governor Racicot, gave a presentation on the report of the Montana Commission on Teaching. Entitled "Quality Teaching, Quality Schools: Strengthening Montana's Most Important Profession", the report details the Commission's work in examining the issues of teacher preparation, hiring, recruitment, professional development, salary structures, and standards in Montana.

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As a result of its work, the Commission made the following recommendations.

1. Get serious about standards for both students and teachers.
2. Reinvent teacher preparation and professional development.
3. Fix teacher recruitment and put qualified teachers in every classroom.
4. Encourage and reward teacher knowledge and skill.
5. Create schools that are organized for student and teacher success.
6. Foster federal education policies which promote quality teaching practices.

These recommendations will be forwarded to the appropriate agencies for consideration and implementation.

Tuition Working Group Conducts Survey...The Tuition Working Group presented a copy of a survey that was sent to every school district in Montana, seeking information on how each district handles tuition and identifying tuition issues that districts have. The surveys are due back by October 15. At that time, the working group will compile the results and attempt to formulate some recommendations on tuition for consideration by the Committee at a later date.

Committee Hears About Lawsuits...Sarah Bond of the Attorney General's Office gave a presentation on two lawsuits recently filed in Montana that involve county commissions and school district trustees. The lawsuits were filed by the ACLU and argue that allowing counties and school districts to elect commissioners and trustees on an at-large basis precludes a minority group from electing minority members as commissioners or trustees. If commissioners and trustees were elected by the voters in a district, then a minority group that may be a minority in the county or school district but is a majority in a specific area of a county or school district would have a better chance of electing a minority candidate. Currently, school districts have the option to elect trustees by district, but that option is not available to counties, unless the county voters adopt an alternative form of government. Ms. Bond said that her office is looking at legislation to provide that same option to counties. The Attorney General may request that the Committee sponsor such legislation.

Local Government Subcommittee Meets...The Local Government Subcommittee met on Thursday, September 30 in Room 487 of the Federal Building. The members of the Subcommittee are Senators Mike Sprague and Jon Tester and Representatives Jeff Mangan and Joe McKenney. Senator Sprague was elected presiding officer and Representative Mangan was elected vice presiding officer. The Subcommittee will conduct the studies outlined in House Joint Resolution No. 29 and House Joint Resolution No. 38.

HJR 29 is a study of local government laws. The purpose of the study is to identify local government laws in need of revision and simplification and to recommend changes to the next Legislature. Because this is such a big task, the Subcommittee felt that the changes should be offered incrementally over the next few interims. The Subcommittee requested that staff form a working group of local

government officials and others knowledgeable about local government issues to assist in the study. At its next meeting in November, the Subcommittee will look at the public notification statutes for local governments.

HJR 38 is a study of salary issues for juvenile probation officers (JPOs). These are issues that the Legislature has attempted to address over the years but has met with little success. The purpose of the study is to identify a mechanism that will provide a more functional and consistent pay system for Montana JPOs.

The Subcommittee will meet again on November 4 in Room 487 of the Federal Building, beginning at 2 p.m.

Committee to Meet in November...The Committee will meet again on November 5 in Room B7 of the Federal Building, beginning at 9 a.m. The meeting will be devoted to local government issues. Staff will present a report on the various forms of government available to counties, cities, and towns. The Committee will also hear from the Montana Association of Counties and the Montana League of Cities and Towns about current issues of concern to local governments.

For further information about the Education and Local Government Committee or the Local Government Subcommittee or to be placed on the mailing list, please contact Connie Erickson, Legislative Services Division, by phone at 444-3064, by fax at 444-3036, or by e-mail at <cerickson@state.mt.us>.

## POSTSECONDARY EDUCATION POLICY AND BUDGET SUBCOMMITTEE

Subcommittee Meets in September...At its September 30, meeting the Subcommittee on Postsecondary Education Policy and Budget (PEPB):

- ▶ elected officers and established a work plan;
- ▶ discussed a report by Eddy McClure on the "Structure of Higher Education in Montana," which detailed the constitutional and statutory authority of the Board of Regents and the Montana Legislature;
- ▶ received a report from Sandy Whitney providing the history and background information surrounding lump sum funding of the University System;
- ▶ discussed the report by Dr. Dick Crofts, Commissioner of Higher Education, on the development and recent changes in the cost of education model used to allocate the lump sum to the campuses;
- ▶ received a report from Dr. Tom McCoy on instruction and research in the University System; and
- ▶ discussed issues before the Board of Regents, including the Montana Tuition Assistance Program and the information technology fee.

Subcommittee Elects Officers...The Subcommittee elected Senator Bea

McCarthy as chairperson and Representative Joan Andersen as vice chairperson. In other business, the PEPB approved the study outline for the SJR 16 University System Funding Study and approved a Subcommittee work plan for the fiscal 2000-2001 interim.

Subcommittee Discusses SJR 16 Funding Study...Eddy McClure, staff attorney for the Legislative Services Division, noted in her report that the Board of Regents has "full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system." However, the Legislature has "constitutional power to appropriate, set public policy, and ensure strict accountability of all state revenue and expenditures." Generally, rationalization of these two roles has resulted in case law and Attorney General opinions holding that:

1. the University System has exclusive control over management, program, and University funds such as tuition; and
2. the Legislature has the power to appropriate, specify the use of state funds, and account for all funds.

The Legislature may not use its appropriation power to indirectly control Board of Regents policy that it cannot control directly, such as setting tuition rates. However, the Legislature may restrict the use of state funds, and the University System must abide by those restrictions if it accepts the money.

As noted in the report on the history and background of lump sum funding by Sandy Whitney, Senior Fiscal Analyst for the Legislative Fiscal Division, the Legislature appropriated state funds in a lump sum for allocation by the Board of Regents, rather than appropriating by unit and program within unit. This action decreased the legislative control over how the funds were spent, but it provided greater management flexibility for the University System. In exchange for that flexibility, the University System:

1. set tuition at agreed upon levels;
2. allocated the funds based on a cost of education formula, as discussed by Dr. Dick Crofts, Commissioner of Higher Education;
3. initiated efficiencies, including capping the number of undergraduate credits the state would support; and
4. agreed to refund general fund if student enrollment did not reach the levels anticipated during the budgeting process.

Both the University System and the Legislature have given up some control in order to maintain greater management flexibility.

Subcommittee Hears about Instruction and Research...The issue of funding for both instruction and research was given a high priority in the survey completed by members of the PEPB. Dr. Tom McCoy, Vice President for Research, Creativity, and Technology Transfer at MSU-Bozeman, presented a summary of how instruction complements research and vice versa.

Board of Regents Presents Issues...The PEPB heard two issues that have been discussed by the Board of Regents: the Montana Tuition Assistance Program (MTAP) and an information technology fee. The Board of Regents policy proposed using MTAP funds, which include the state funds appropriated in the lump sum, for grants to qualified students at private not-for-profit colleges and the tribal colleges. The Commissioner of Higher Education presented a policy change clarifying that students attending sectarian not-for-profit schools cannot receive state funds. The PEPB defeated a motion that recommended the Board of Regents provide funds to students attending all public colleges, including tribal colleges. There were no further motions, so the PEPB made no formal recommendation to the Regents.

House Bill 15, passed by the 1999 Legislature, included \$800,000 in bonding authority for the purpose of reducing the student technology fees for the University System's Banner integrated accounting system. At the time the bill was passed, only students on the MSU campuses were paying that fee. After the bonding authority was approved, the Regents approved a University of Montana proposal for a technology fee for Banner and a share of the \$800,000 for the UM campuses. Rod Sundsted presented the issue to the PEPB and explained the Regents' action.

Subcommittee Adopts Work Plan...The interim work plan approved by the Subcommittee includes studies to fulfill the goals requested by SJR 16. Those goals are to determine the effectiveness of lump sum funding, investigate alternative funding systems, and determine how local communities can participate in policy making at the local units. To accomplish the goals, the Subcommittee will be investigating Montana's current operations and comparing Montana's methods to those in other states. Proposed studies include:

1. constitutional and statutory provisions governing postsecondary education;
2. legislative budgeting methods;
3. distribution of state funds to the units and programs;
4. measurements of quality and student success; and
5. student versus system-based funding systems.

In addition to the SJR 16 funding study, the Subcommittee also approved investigation into other issues as time permits. Those issues include the K-12 transition to postsecondary education, student costs and financial aid, and performance measures.

The Subcommittee adopted the work plan and a tentative agenda through February 10, 2000. At that time it will assess the Subcommittee's progress and establish a tentative agenda for the remainder of the interim.

To Meet in November...The Subcommittee will meet again on Thursday, November 4 in Room B7 of the Federal Building, beginning at 1 p.m.

For further information about the Subcommittee, please contact Sandy Whitney, Legislative Fiscal Division, at 444-2986.



## STATE ADMINISTRATION COMMITTEE

SAIC to Hold Two-Day Meeting...The State Administration, Public Employee Retirement Systems, and Veterans' Affairs Committee (SAIC) will conduct a 2-day meeting on Monday and Tuesday, November 8 and 9. The meeting will be held in Helena, at the Montana Association of Counties' Conference Room, 2715 Skyway Drive (adjacent to the main airport terminal).

At its September meeting, the SAIC established two subcommittees and decided to structure its work as follows:

- ▶ The Disability and Health Care Subcommittee will examine disability benefits for public employees and options for providing disability coverage to members of the new Defined Contribution retirement plan (an optional plan within the Public Employees' Retirement System). The disability study will also encompass discussion of whether and how to disengage disability benefits from the public retirement plans and instead provide disability benefits under public employee health plans. The Subcommittee will also examine whether and how to help public employees place a certain amount of compensation or retirement contributions into a special account to help pay for health insurance and other medical expenses after retirement.
- ▶ The Military and Veterans' Affairs Subcommittee will provide a forum for emerging veterans' issues and for legislative monitoring of the Youth Challenge Program under the Montana National Guard.
- ▶ The full SAIC will examine state contracting laws as requested under SJR 9. The full Committee will also preview proposed legislation to amend any of the public employee retirement systems.

SAIC and Subcommittees to Meet...On November 8, the Disability and Health Care Subcommittee will meet from 8 a.m. to Noon and will receive background information and initial issues and options for change. Members of the Subcommittee are Senator Pete Ekegren, Chair, Senator Sue Bartlett, Representative Matt Brainard, and Representative Tom Dell.

The full SAIC will convene at 1:30 p.m. to review the 1999 Homeless Stand Down held at Fort Harrison September 16-18. Several representatives of the volunteers and organizations who participated in the Stand Down will critique the event. General public comment is also welcomed.

On November 9, the full SAIC will receive a briefing from the Public Employee Retirement Board on implementation of HB 79 (establishing the new defined contribution retirement plan). Subsequently, the focus will shift to the study of state contracting commissioned in SJR 9. Legal considerations of contracting -- in general, highway, and building -- will continue the SAIC's examination of Montana's public contracting statutes. An overview of the administrative procedures followed for various types of contracting will follow and should complete the morning session. For the afternoon of November 9, the meeting will concentrate on



scrutinizing the meaning of "the state's best interest" in the context of public contracting. Brief presentations will be made by several state procurement staff and by several private vendors and association representatives, who will also engage the SAIC in a broad discussion of "the state's best interest".

Following adjournment of the full SAIC on November 9, the Military and Veterans' Affairs Subcommittee will convene at 3:30 p.m. to conduct an organizational meeting. The Subcommittee will identify issues and adopt a work plan for the remainder of the interim. Members of the Subcommittee are Senator Don Hargrove, who is Chair, along with Senator Glenn Roush, Representative Edith Clark, and Representative Carol Williams.

For additional information about SAIC or its Subcommittees, contact Sheri Heffelfinger, Legislative Services Division, by phone at 444-3064 or by e-mail at <sheffelfinger@state.mt.us>.

## LAW, JUSTICE, AND INDIAN AFFAIRS COMMITTEE

Committee to Meet in Missoula...Missoula is the site for the next meeting of the Law, Justice, and Indian Affairs Committee (LJIAC) on November 18 and 19. The Committee will meet at the Missoula Fire Station No. 4, located at 3011 Latimor Street. The facility's general location is just off of West Broadway near the Rocky Mountain Elk Foundation building (F-8 on the Missoula Northwest Street Map found in the US West phone directory).

District Court judges or interested members of the public are invited to attend and address the Committee. Those on the LJIAC's interested persons' list will be receiving a meeting notice and agenda by the end of the week of November 1.

To Continue Work on Women's Prison Issues...On the morning of the 18th, the Committee will follow up on the House Joint Resolution No. 37 study of women's prison issues, discussing with the Department of Corrections some outstanding items remaining from the Committee's September visit to the prison. The Committee will also work through an options paper that prompts a decision on each major topic that the study addresses. An example of a topic and the options provided to the Committee is as follows:

### TOPIC #3: Placement of Women in Out-of-State Contract Beds

- ▶ On September 13, 57 female offenders were being housed at McKinley County Adult Detention Center in Gallup, New Mexico.
- ▶ While educational and training programs are not provided to the inmates in New Mexico at the same level as those programs are provided to inmates at MWP in Billings, programs do meet the stipulations of the Parole Board, so these inmates can be eligible for pre-release or other placement.

- ▶ Programs offered include chemical dependency, criminal thinking errors, anger management, education, and computer training.
- ▶ Inmates were screened to determine which individuals would be relocated to the New Mexico facility. The screening included factors like length of sentence, medical condition, mental health, eligibility for parole or placement in pre-release, and whether the inmate is a parent of a child under 18. It was unavoidable that some mothers of minor children would be moved to New Mexico, given that 67% of the population have children under 18.
- ▶ Inmates are returned from New Mexico when they have been granted parole and are eligible for discharge or pre-release placement and for medical, mental health, or behavioral reasons.
- ▶ All inmates will be returned from New Mexico when housing at MWP is available. There are currently no plans to house female inmates in any of the regional facilities or at the Crossroads Correctional Center in Shelby because they were built for men and do not accommodate the special needs of women in housing, staff support, programming, or medical care.

#### OPTIONS (#3)

1. No action necessary, information provided sufficiently addresses the issue.
2. Request additional information - information provided is insufficient.
3. Recommend legislation.
4. Recommend action by the DOC.
5. Other.

The Committee will also be asked to point staff in the direction that members envision the HJR 37 study taking from this point.

To Hear from Board of Pardons...Also on the morning of the 18th, the Committee will hear an overview of the Board of Pardons and Parole and discuss various issues with the Board's Executive Director, Craig Thomas. The Committee will conclude the morning session with a general Department of Corrections update.

LJIAC to Consider Indian Issues...The afternoon of the 18th is dedicated to the Committee's Indian Affairs charge. Connie Erickson will update the Committee on the House Joint Resolution No. 12 study of a Commission on Indian Affairs. The Committee will be given an overview of the state's Human Skeletal Remains and Burial Site Protection Act that may be a subject of discussion later in the interim, and the members will hear updates on HB 528 (Native American education), HB 412 (removing "squaw" from place names), and HB 670 (Native American Economic

Development Commission).

DOJ to Give Overview...A Department of Justice (DOJ) overview is scheduled for the 19th. Representatives from the DOJ will discuss with the Committee the basic structure and function of the Department and will discuss DOJ program managers' answers to the following questions posed to them this summer.

1. Do you foresee any issues or problems (budgetary or otherwise) within your department that the 2001 Legislature may be dealing with?
2. Are there specific laws that your department is consistently having trouble complying with or enforcing? Is the absence of a law in a particular area causing problems?
3. Are there successes that your department or its programs have achieved that the Committee should know about? Are there successes that the department will need legislative assistance to build upon?
4. How have actions taken by the 1999 Legislature affected your department and its functionality (positively or negatively)? Do those actions need to be reconsidered in 2001? Why?
5. Are the state's citizens who have contact with your department generally satisfied with the services provided?

Other Issues to be Discussed...Krista Lee, Environmental Quality Council staff, will update the Committee on EQC and LJAC's Eminent Domain Subcommittee. Finally, staff will provide an update on the Department of Administration's Court Funding and Structure Committee, authorized by the 1999 Legislature through Senate Bill No. 184.

For more information on the LJAC or the November meeting (including specific directions to the meeting location), contact Leanne Kurtz, Committee staff, by phone at 444-3064 or via e-mail at <lekurtz@state.mt.gov>.

## **BUSINESS, LABOR, AND AGRICULTURE COMMITTEE**

Committee Meets in October...The Business, Labor, and Agriculture Committee (BLAC) met on October 8 at the Montana Association of Counties' (MACo) new building in Helena. After dispensing with a number of administrative issues related to agency monitoring and rule review, the members focused their attention on the HB 515 study on government competition with private vendors.

Committee Receives Request from SAIC...During the summer, the Committee

received a request from the State Administration, Public Employee Retirement Systems, and Veterans' Affairs Committee to assume the rule review and agency monitoring responsibilities for the State Fund. The BLAC agreed to accept these functions and has requested that the State Fund appear at the upcoming meeting to discuss an issue related to managed care organizations.

Departments Discuss Economic Development...The Committee heard from the Departments of Agriculture and Commerce on the current condition of economic development activities in Montana and the final outcome of the Governor's Jobs and Income economic development package from the 1999 legislative session. Additionally, the two Departments outlined which programs would be affected if the program funding mechanism developed in HB 260 were to be declared unconstitutional by the Montana Supreme Court.

Committee Adopts Study Plan on Government Competition...The majority of the meeting offered members the opportunity to discuss the proposed study plan for HB 515. The Committee adopted the study plan and is expecting to continue to move forward by gathering information from interested persons, private vendors, and governmental entities. The study plan was written to allow any of the identified goals to stand alone. However, it is the Committee's intention to begin with the first identified goal and continue working on coordinating the findings and conclusions for a final recommendation at the close of the interim cycle. The following are the key areas on which the Committee has chosen to concentrate:

1. Develop a more complete understanding of the issues associated with government competition with private vendors.
2. Uncover methodologies that other governmental units have employed to address public-private competition.
3. Begin a process to define the role of government, including how government serves itself; how it serves the public; and the public's expectation of government.
4. Assess the benefits and costs of privatization.
5. Identify specific services that are candidates for privatization.
6. Develop a methodology for reviewing whether privatized services are meeting established expectations.

The Committee determined the best method of gathering information about government competition with private vendors is to ask both parties to answer a series of questions. By framing the questions in a manner that encourages stakeholders to not only describe their current situations but also offer any policy recommendations that adequately address the problem, the members can begin to

search for common issues and focus their attention on developing suitable recommendations. The Committee is considering a wide range of survey delivery options to ensure that the information gathered comes from as many sources as possible.

To Meet Again in November...The BLAC will meet at 8:30 a.m. on November 12 at the MACo Building in Helena. For further information about the Committee's next meeting or activities related to HB 515 and the Committee questionnaire, contact Gordy Higgins, Legislative Services Division, by phone at 444-3064 or by e-mail at <gohiggins@state.mt.us>.

## ENVIRONMENTAL QUALITY COUNCIL

MEPA Subcommittee Meets in Great Falls...The MEPA Subcommittee met in Great Falls on October 22. The meeting was well attended and included a two hour public comment period. The Subcommittee also reviewed and prioritized issues. The next MEPA Subcommittee meeting is set for December 2. The Subcommittee is planning an evening public hearing and panel discussions on current MEPA implementation and the effect of the recent Supreme Court decision on the implementation of MEPA, if any.

If you have any questions, please contact Todd Everts or Larry Mitchell, Environmental Quality Council, at 444-3742.

Eminent Domain Subcommittee Meets in September...At its meeting in September, the Eminent Domain Subcommittee reviewed background and historical information about eminent domain and its use in Montana. The Subcommittee also revised their draft work plan. Study topics, to date, include historical eminent domain use, federal/state relationship on eminent domain cases-specifically those that are initiated at the federal level and the state's level of concurrence on projects-development of 2 case studies of projects that have been completed by entities that have the authority to exercise eminent domain, landowner liability associated with the types of interest taken in property, the types and level of science used on projects and who provides oversight, and comparing the entities that have been given the right to exercise the right of eminent domain in Montana to entities given the right in other states.

The next Eminent Domain Subcommittee meeting will be held December 1 in Helena. This meeting will be followed by an evening public hearing.

EQC to Meet in December in Helena...The Environmental Quality Council will meet on December 3 in Helena. For more information please contact the EQC staff at 444-3742.

## REVENUE AND TAXATION COMMITTEE

Committee Hears Program Report from the Department of Transportation...The Revenue and Taxation Committee met September 23 in Helena. The Department of Transportation presented a comprehensive overview of its organizational structure, missions and goals, programs and funding, legislative issues, and topics for future meetings. A significant factor of the Department's activities is the increase in federal funding for highways and other transportation-related projects. On June 9, 1998, President Clinton signed into law PL 105-178, the Transportation Equity Act for the 21st Century (TEA-21). The law authorizes highway, highway safety, transit and other surface transportation programs for fiscal years 1998 through 2003. The federal authorization level for transportation programs in Montana will increase by an average of \$100 million annually. Additional funding has been made available for the National Highway System (e.g., rural and urban roads serving population centers and intermodal transportation facilities), interstate maintenance, and bridge safety and maintenance. A significant amount of the increased funding will be dedicated to reconstruction, widening, and overlay projects.

The Department discussed major projects under the State Transportation Improvement Program as well as nonhighway program components that include the Community Enhancement Program (e.g., pedestrian and bicycle facilities, scenic and historic highways, landscaping and beautification), rest areas, public transit programs, rail activities, and the Lewis and Clark Bicentennial. The Department also summarized its new responsibilities under Senate Bill No. 333. During the 1999 session, the Legislature directed the Department to take over the maintenance of secondary roads from the counties.

The Department also identified issues that may merit legislative consideration. These include the long-term viability of the highway state special revenue account, the speed limit on secondary roads, procedures for obtaining rights-of-way, hiring and retention of Department employees, and motor fuel tax laws.

Janice Brown, Administrator, Federal Highway Administration, discussed the partnership agreement between the Federal Highway Administration and the Montana Department of Transportation. The current agreement is being revised to take into account revisions made under TEA-21. Additional authority is delegated to state departments of transportation, and the role of the federal government is to review and approve state proposals, develop regulations and guidelines, provide technical assistance, and reimburse states for eligible expenses. In a memorandum to the Department, Ms. Brown outlined some problem areas related to Department activities. The Department and FHWA are addressing those areas and the Department will respond to the issues raised in the memorandum at the next Committee meeting.

The Committee also heard public comment on the activities of the Department. Representative Dan Fuchs discussed the Department's procedures for suspending a contractor. Phil Olson, Gallatin County Commissioner described some problems associated with the construction of a bike path in his county. Brian Cavey, Motor



Carriers Association, commented on the need for more efficient weigh stations, additional parking for large trucks at rest areas, and for a simplified fuel tax policy. Mike Foster, Montana Contractors' Association, told the Committee that Montana contractors have developed a very good working relationship with the Department and the Montana Transportation Commission.

Following the Department's presentation, the Committee identified several issues for future consideration. These include the Committee's program monitoring functions, TEA-21 projects in general, the flow of federal and state funds, Department staffing levels, rule review, and right-of-way issues. These issues will be included as agenda items throughout the interim.

Sources of Revenue for Housing Trust Funds...Senate Bill No. 349 (Ch. 312, L. 1999) created an affordable housing loan fund to assist low- and moderate-income Montanan citizens in obtaining affordable housing. The loan fund is administered by the Montana Board of Housing. The Board may accept contributions, gifts, and grants for deposit into the loan account. However, it is unlikely that these sources of revenue will sufficiently capitalize the account.

Mary Brooks, National Housing Trust Fund, presented a brief overview of states that have created housing trust funds and the various sources of revenue used to provide funding. She said that a reasonable goal for the Montana loan fund would be \$5 million. The Committee instructed staff to provide additional background on housing trust funds for the next meeting. The Committee will decide at that time whether it wants to explore revenue sources for the Montana program.

Study Proposal to Examine Local Government Debt Limit Provisions...Over the last few sessions, the Montana Legislature has made several adjustments to the way in which debt limits for local governments are determined (in general, the amount of debt may not exceed a certain percentage of a local government's taxable value). The purpose of these adjustments is to offset the effect of reducing the tax rate on or exempting from taxation certain types of property. As a result, the method for calculating debt limits has become increasingly complex and cumbersome. Committee staff presented a proposal to examine alternatives to the existing debt limit laws, and the Committee agreed to undertake the study. Representatives of local governments, bond counsel, bond underwriters, and local government financial advisors will be involved in the study. Chairman Hibbard appointed Representatives Bob Story and Ron Erickson to a study subcommittee.

Other Issues and Topics...Terry Johnson, Principal Analyst, Legislative Fiscal Division, reported on general fund collections for fiscal year 1999. Higher revenue collections, lower disbursements, and accounting adjustments resulted in a larger than expected general fund ending fund balance that is about \$38.5 million higher than expected.

Dave Woodgerd, Chief Legal Counsel, Department of Revenue, summarized the legal challenges to House Bill No. 260 (Ch. 563, L. 1999) that established a new coal producers license tax to provide funding for research and commercialization



projects in Montana. Oral arguments were made before the Montana Supreme Court on October 12. A ruling is expected before the end of the year.

Mary Bryson, Director of the Department of Revenue, reported on the implementation of Senate Bill No. 184 that revised the taxation of residential and commercial land and improvements. The report included information on rules, newly taxable property, and reimbursements to local governments.

The Committee adopted a work plan for the interim.

Committee to Meet December 10...The Committee will met December 10 in Helena. While the Capitol building is undergoing renovation, interim committees have to jockey for meeting rooms so a location has not been set. Some of the tentative agenda items include:

- ▶ WEFA report on national economic trends;
- ▶ Committee revenue estimating procedures;
- ▶ Senate Bill No. 11 program overview by the Department of Revenue;
- ▶ Department of Revenue Tax Policy reports
- ▶ Transportation Commission report on duties and responsibilities;
- ▶ Department of Transportation topics;
- ▶ review of housing trust funds and revenue sources; and
- ▶ implications of HB 260 decision (if Montana Supreme Court has issued ruling.

Additional details about the December meeting will be provided in the next issue of **THE INTERIM**. In the meantime, contact Jeff Martin, Legislative Services Division, by calling (406) 444-3064 or by e-mail at <jmartin@state.mt.us> for more information.

## TRANSITION ADVISORY COMMITTEE

TAC to Meet at DEQ...The Transition Advisory Committee (TAC) will hold its second meeting on November 5 in the Director's Conference Room (#111) at the Department of Environmental Quality, which is located in the Metcalf Building at 1520 E. Sixth Avenue in Helena. The meeting will begin at 9 a.m. and is scheduled to adjourn at 4 p.m., with a 90-minute lunch period at noon.

To Discuss "Default Supplier"...In addition to the standard updates from Committee members and others on various aspects of the transition to competition, there will be a round table discussion of issues surrounding the Public Service Commission's rules governing the licensure and designation of the "default supplier" of electricity (i.e., the entity that will bear responsibility for providing power to consumers who do not exercise choice during the transition period and thereafter). The Commission is required to promulgate these rules on or before December 1, and a public hearing on their proposed language will be held November 4, a day before this TAC meeting. The discussion will bear on provisions in SB 390 (1997) and SB

406 (1999), which authorized the formation of a buyers' cooperative to serve as the default supplier. The rules will affect the newly created Montana Electricity Buyers' Cooperative (MEBC), as well as cities and towns, which under a separate bill (HB 211) are also allowed to serve as the default supplier in their respective jurisdictions. A specific measure in SB 406 says that the Transition Advisory Committee "shall review and address the need for continued default supply service and make recommendations to the 57th legislature." (69-8-201(3), MCA).

BPA Subject of Discussion...Another topic of discussion will be a cluster of issues involving the Bonneville Power Administration (BPA). The agency will have just issued (or be on the verge of issuing) an official "record of decision" regarding eligibility for obtaining electricity at a preferred rate--a decision that will have a material affect on the prospects of the buyers' cooperative mentioned above.

Another matter is BPA's allocation of federal benefits to Montana as compared to other states in the Pacific Northwest. The Racicot Administration and other entities in the state have insisted that BPA be more generous with its allocation. Staff will present a very brief overview of BPA's origins and purpose and the reasons why the agency's recent policy decisions seem to strike against the grain of restructuring. Following the presentation, questions from TAC members and audience participants will be directed to a panel of respondents, including: Gail Kuntz, BPA; John Hines, NWPPC; Mark Stauffer, MPC; Tim Gregori, Central Montana Generation & Transmission Cooperative; Kathy Hadley, MEBC; Bob Anderson, PSC; and Tom Schneider, City of Missoula.

Will Discuss Other Issues...The TAC will also receive and discuss an update on the Department of Revenue's rulemaking in relation to the administration of Universal Systems Benefits credits. A public hearing on the proposed rules is scheduled for Nov. 12, so this meeting will provide an opportunity to clarify outstanding issues.

Finally, the TAC will discuss and resolve several administrative matters, including whether any subcommittees are warranted this interim, progress on the Committee's Internet web pages, and several budget items. Members will have also received a draft copy of the annual report required under SB 390, and they will be asked to ratify the contents of the report so that it can be printed and distributed to the Governor, legislative leaders, and other interested persons.

For further information, please contact Research Analyst Stephen Maly at 444-3064 or send an e-mail to <smaly@state.mt.us>.

## PUBLIC INFORMATION SUBCOMMITTEE

Subcommittee Travels to Washington...The Legislative Council's Public Information Subcommittee received a day-long orientation to Television Washington's (TVW) operations in Olympia on October 29. Subcommittee members

are Senators Mack Cole and Debbie Shea and Representatives Emily Swanson and Mark Noennig. The trip served to kick-start the Council's study of the feasibility of televising the Legislature and related government functions.

Staff to Prepare Work Plan...In the coming weeks, staff will prepare and disseminate a work plan for the Subcommittee that will include a schedule of meetings (most of which will dovetail with dates already selected by the Council for the interim) and an assembly of topical arenas that need to be addressed, including: programming and production management, prospective public-private partnerships, technical requirements and technological considerations, methods and costs of distribution of television signals, funding sources and needs on an ongoing basis, enabling legislation, and planning for a pilot program.

Interested persons and organizations will be invited to participate in this process. To date, the League of Women Voters, Montana Public Television, AT&T/TCI, Montana Power Company, and a number of other firms and individuals have expressed keen interest in the study and its outcome. The Department of Administration and the Office of Public Instruction will also be called upon for insight and assistance.

As the Subcommittee's name implies, the television study is part of a broader picture. Stay tuned for future notices concerning a strategic plan for meeting the Legislative Council's charge to better educate and inform Montana citizens about the Legislature and its processes.

If you or your organization would like to be involved in this endeavor, please contact Research Analyst Stephen Maly at (406)444-3064 or send an e-mail to <smaly@state.mt.us>.

## **CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE**

To Meet in November...The next meeting of the Children, Families, Health, and Human Services Committee will be held on November 19 and will include standing reports on the various mental health committees, the request made to the State Administration Committee, regarding the monitoring of Project Challenge, and other reports required by HB 2. The Committee will address administrative rule issues, including Rule X of the Network Adequacy Rules for Managed Care and the status of the CHIP rules and other proposed rules. The main study topics will include FAIM, TANF, and related welfare issues. There will be an opportunity for brief public testimony regarding public policy issues of Rule X in the morning; general public testimony is scheduled for the afternoon.

As soon as a tentative agenda is available it will be posted to the new interim committee website at [http://leg.state.mt.us/interim\\_committees/Children\\_and\\_Families/index.htm](http://leg.state.mt.us/interim_committees/Children_and_Families/index.htm). Please visit the website and let us know what

you think!

For more information or if you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at <sfox@state.mt.us>, or by mail to: Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

## DISTRICTING AND APPORTIONMENT COMMISSION

To Meet in December...The Districting and Apportionment Commission has scheduled its first meeting with its full membership for December 13. The meeting place and agenda will be forthcoming, but the Commission is likely to adopt a meeting schedule for the next year in preparation for the receipt of Census data, which triggers the redistricting process.

The Commission's charge is to redistrict the state for both the congressional and legislative districts following the 2000 Census. By January 1, 2001, the state will learn whether an additional congressional seat will be gained in the reapportionment of congressional seats. The census data is expected in the first months of 2001, when redistricting will begin in earnest. In the meantime, the Commission will be preparing background research, adopting a timetable for the process, selecting criteria, and making decisions on data and methodology.

If you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at <sfox@state.mt.us>, or by mail to: Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

## COUNTDOWN TO CENSUS 2000: APRIL 1, 2000

*The following information was borrowed from the United States Census 2000 Frequently Asked Questions website. Visit the Census Bureau at <http://www.census.gov> to learn more about Census 2000 and what you can do to ensure a successful census in which everyone in your community is counted.*

**What questions are on the census forms?**

The following questions will be on the short form (100%) questionnaire that everyone receives: Tenure (whether a housing unit is owned or rented), Name, Sex, Age, Relationship to household, Hispanic Origin, and Race.

The long form (sample) questionnaire, which goes to an average of one in six households, has the short form questions plus additional questions on the following subjects:

Social characteristics of Population: marital status, place of birth/citizenship/year of entry, education-school enrollment/educational

attainment, ancestry, residence 5 years ago (migration), language spoken at home, veteran status, disability, grandparents as caregivers.

Economic characteristics of Population: labor force status (current), place of work and journey to work, work status last year, industry/occupation/class of worker, income (previous year).

Physical characteristics of Housing: units in structure, number of rooms, number of bedrooms, plumbing and kitchen facilities, year structure built, year moved into unit, house heating fuel, telephone, vehicles available, farm residence.

Financial characteristics of Housing: value of home, monthly rent, shelter costs (selected monthly owner costs).

**Remember to fill out your census form when it arrives in March 2000!**

## THE BACK PAGE

### TITLE 7, CHAPTER 3: A CAFETERIA-STYLE APPROACH TO LOCAL GOVERNMENT

by Connie F. Erickson, Research Analyst  
Legislative Services Division

#### INTRODUCTION

Although there are numerous governmental entities with which Montana citizens interact on a regular basis, it is county and municipal governments that have the greatest impact on people's lives. It is those governments that supply us with water and sewer services, pick up our garbage, collect our taxes, conduct our elections, provide police and fire protection, operate our libraries, and plow our streets. The elected officials of our county and municipal governments are our neighbors. We go to church with them, we see them in the grocery store, their children play soccer with our children. If we see a problem in our community, we can pick up the phone and call our local official to complain or to offer a solution. In other words, local government is the government that we are most familiar with, the government on which we can have the greatest influence.

In Montana, we can even choose the form of our local government. Title 7, chapter 3, of the Montana Code Annotated offers numerous optional forms from which Montana citizens can choose their type of local government. But it wasn't always this way. This "cafeteria-style" approach to local government came about through the adoption of a new state constitution in 1972. Prior to that time, Montana local governments reflected traditional forms.

#### WHAT WAS LOCAL GOVERNMENT LIKE PRIOR TO 1972?

Counties are generally considered to be subdivisions of the state. The purpose for the existence of a county is to administer state programs at the local level; e.g., public assistance, tax collection, elections. A county's sole function, then, is administrative and not legislative. As a result, counties lack the authority to adopt ordinances. The traditional county governmental structure in Montana was inherited from other states. When Montana became a territory in 1864, territorial legislators adopted a county governmental structure that was familiar: a three-member board of commissioners and a long list of other county officials, all popularly elected. The historical purpose behind such an arrangement was to keep local government accountable to the people and to prevent any one official from acquiring too much power. When Montana adopted its first state constitution in 1889, this territorial



system of county government was embedded into constitutional law. Municipalities are often considered true local governments. A municipality is formed by residents to provide a level of governance and services to a defined area of relatively high population density. A municipality, unlike a county, has ordinance-making powers.

Article XVI of the 1889 Constitution dealt with counties and municipalities. Counties received the greatest attention, while municipalities received only passing mention. The statutes that implemented the constitutional provisions, however, established the form of government to be used by municipalities. Every municipality had to be divided into wards; the number of wards depended upon the municipality's classification. (Classification is based on population.) Each municipality then elected two aldermen from each ward and one mayor. The number of other elected or appointed municipal officials depended on the municipality's classification. In 1911, the Legislature allowed municipalities to reorganize under a commission form of government: popularly elected mayor and councilmen, with the councilmen elected at-large and not by wards. Six years later, the Legislature established an additional form of government for municipalities: commission-manager.

In 1922, the Constitution was amended to allow the Legislature to provide alternative forms of local government, including consolidation, even though two alternative forms already were statutorily available for municipalities. The Legislature responded to the amendment by passing city-county consolidation legislation in 1923 and county manager legislation in 1931. However, counties and municipalities generally failed to take advantage of these alternative possibilities. By 1972, only two municipalities had adopted the commission-manager form of government, only one county had a county manager, and there were no city-county consolidations.

## HOW DID THE 1972 CONSTITUTION AFFECT LOCAL GOVERNMENTS?

The local government article in the 1972 Constitution gave citizens greater discretion in designing local government structures by directing the Legislature to provide optional or alternative forms of government. The Legislature was also directed to provide procedures by which a local government unit could adopt a self-government charter. In addition, self-government powers could be extended to other local governments that adopted one of the optional forms provided by the Legislature.

This extension of self-government powers was a tremendous leap of faith by the constitutional framers. Historically, counties and municipalities had general government powers only. This meant that a county or municipality had only those powers granted to it by the Legislature. In addition, when there was any doubt as to the power of a county or a municipality to provide a service or regulate an



activity, the courts applied a narrow interpretation of local government power and ruled against the local government.

The 1972 Constitution provides that a local government with self-government powers has all powers not specifically denied by the Constitution, statute, or local charter. In addition, all local government powers, whether general or self-government, are to be liberally construed. This means that in cases in which the power of a local government is in doubt, the courts are instructed to conclude that the power does reside in the local government.

#### **WHAT ALTERNATIVE FORMS OF GOVERNMENT ARE CURRENTLY AVAILABLE?**

Montana law currently provides five basic optional forms of government in addition to the two traditional forms for a county and a municipality. With a single exception, any of the optional forms may be adopted by the voters of either a county or a municipality during the voter review process or by voter initiative. The single exception is the town meeting form, which is available only to municipalities of less than 2,000 people. The five basic optional forms are the commission-executive, commission-manager, commission, commission-chairman, and town meeting. Each form can be even further differentiated by the adoption of one or more of the following structural options:

- ▶ partisan or nonpartisan elections;
- ▶ term of office;
- ▶ presiding officer of legislative body;
- ▶ concurrent or overlapping terms of office;
- ▶ budget authority, appointment authority, and veto power of chief executive;
- ▶ appointment of administrative assistants;
- ▶ selection process of chief administrative officials;
- ▶ district or at-large commissioner elections;
- ▶ size of legislative body;
- ▶ use of community councils to advise legislative body; and
- ▶ general government or self-government powers (not available with commission form).

Counties and municipalities also have the option of forming a consolidated government or adopting a charter form of government. Consolidation occurs when a county and a municipality within the county unite to form a single unit of local government. Montana statutes provide two options for effecting a consolidation. Option One allows for consolidation by means of a recommendation by the study commissions of the local government units within the proposed consolidation area during the voter review process and approval by the voters in the affected area. Under Option One, the voters can adopt any one of the five basic optional forms or a self-government charter. Under Option Two, consolidation can be proposed by

voter initiative requesting that the question of consolidation be submitted to the voters. If approved by the voters, the commission-manager form of government is automatically adopted. In addition, under Option Two, the departmental structure of the consolidated government is statutorily specified.

The final form of government available to counties and municipalities is the charter government. A charter government is established by a written charter that defines the structure, powers, privileges, rights, and duties of the local government unit and the limitations on the government. The charter provisions establish the executive, legislative, and administrative structure and organization of the local government unit. A charter form of government has self-government powers.

### **WHAT FORMS OF GOVERNMENT ARE CURRENTLY IN USE IN MONTANA?**

Of the 56 counties in Montana, 52 operate under the traditional commission form of government. One county (Petroleum) has adopted a commission-manager form of government. These 53 counties exercise general government powers. One county (Fergus) has adopted a charter government and selected the commission form. Two counties (Deer Lodge and Silver Bow) have consolidated with municipalities and adopted charter governments. Both Butte-Silver Bow and Anaconda-Deer Lodge have selected the commission-executive form of government. Fergus and the two consolidated governments exercise self-government powers.

Of the 126 municipalities in Montana, 92 have a commission-executive form of government, exercising general government powers; nine have a commission-executive form, exercising self-government powers; four have a commission-manager form, exercising general powers; and two have a commission-chairman form, exercising self-government powers. Nineteen municipalities have adopted a charter government, exercising self-government powers. Of these 19, 12 have a commission-executive form, six have a commission-manager form, and one (Pinesdale in Ravalli County) has a town meeting form.

### **HOW CAN CITIZENS CHANGE THEIR FORM OF GOVERNMENT?**

There are two ways to alter the existing form of a local government unit. The first is by voter petition. The petition must be signed by 15% of the registered voters of the local government unit and presented to the governing body. The petition must include, among other things, the proposed new form of government or the proposed amendments to the existing form and information supporting both the adoption of the proposed changes and the retention of the existing form. Upon receipt of the petition, the governing body must call an election on the proposed changes. The election must be held in conjunction with the next regular or primary

election that is at least 75 days after the call.

The second way to alter the existing form of a local government unit is through local voter review. Every 10 years, each local government unit in Montana must hold an election on the question of conducting a local government review. If the question is approved, then a second election is held to establish a study commission that will conduct the actual review. A commission candidate must be a registered voter of the local government unit but may not be an elected official of the local government. A study commission can recommend amendments to the existing form of government;

- ▶ recommend any form of government authorized in statute;
- ▶ draft a charter;
- ▶ recommend consolidation or amendments to an existing consolidation;
- ▶ recommend a county merger;
- ▶ recommend disincorporation of an existing municipality; or
- ▶ submit no recommendation.

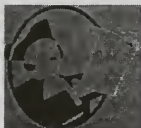
If the study commission recommends an alternative form of government or changes to an existing government, the recommendation must be submitted to the voters.

There have been three voter review cycles since the adoption of the 1972 Constitution. The following table shows the results.

VOTER REVIEW CYCLE	# OF STUDY COMMISSIONS	# OF BALLOT PROPOSALS	# OF BALLOT ADOPTIONS
1974-76	182	173	31
1984-86	98	37	16
1994-96	112	53	22
TOTAL	392	263	69

CONCLUSION

Montana's "cafeteria-style" approach to local government allows citizens wide discretion in designing and empowering local governments. Citizens can design a government that meets the needs of their local community and enhances the local government's autonomy. Montana voters have used this power to alter their local governments in a very judicious manner. There is no reason to believe that in the future, voters will act any differently.



## INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,  
ALL MEETINGS ARE HELD IN HELENA.

### NOVEMBER

November 4, Postsecondary Education Policy and Budget Subcommittee, Federal Building, Room B7, 1 p.m.

November 4, Local Government Subcommittee, Federal Building, Room 487, 2 p.m.

November 5, Education and Local Government Committee, Federal Building, Room B7, 9 a.m.

November 5, Transition Advisory Committee, Department of Environmental Quality, Room 111, 1520 E. Sixth Avenue, 9 a.m.

November 8, State Administration, Public Employee Retirement Systems, and Veterans' Affairs Committee, Montana Association of Counties, 2715 Skyline Drive, 1:30 p.m.

Disability and Health Care Subcommittee, 8 a.m.

November 9, State Administration, Public Retirement Systems, and Veterans' Affairs Committee, Montana Association of Counties, 2715 Skyline Drive, 8 a.m.

Military and Veterans' Affairs Subcommittee, 3:30 p.m.

November 11, Veterans' Day, holiday

November 12, Business, Labor, and Agriculture Committee, Montana Association of Counties, 2715 Skyline Drive, 8:30 a.m.

November 18-19, Law, Justice, and Indian Affairs Committee, Missoula, Fire Station No. 4, 3011 Latimore Street, 8:30 a.m.

November 19, Children, Families, Health, and Human Services Committee

November 25, Thanksgiving, holiday

**DECEMBER**

December 1, Eminent Domain Subcommittee

December 2, MEPA Subcommittee

December 3, Environmental Quality Council

December 10, Revenue and Taxation Committee

December 13, Districting and Apportionment Commission

December 24, Christmas observed, holiday

December 31, New Years' Day observed, holiday



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